

**REMARKS**

**I. Introduction**

Claims 2-6, 9-12, 15-18, 20-25 and 38-40 are currently pending in this application.

Applicants thanks Examiner Casmier J. Jacyna for participating in the interview with Applicants representatives on May 21, 2009. Applicants respectfully request reconsideration and request that for the following reasons the rejections should be withdrawn, the application allowed, and the case passed to issue.

**II. Claim Objections**

Claim 25 was objected to for allegedly being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicants respectfully disagree and submit that a careful reading of the claims reveals this is not the case. It is respectfully submitted that the claims recite different sealing members (or sealing ribs) on the "top cap" and the "main closure".

Turning firstly to claim 38, with reference to FIG. 1, it is be noted that the closure is defined as comprising a "main closure," 10 and a "top cap," 50. The main closure has a top portion 11, a skirt portion 12, a main closure sealing rib 16, a spout 33, and a plug member 36. The outer surface of the spout 33 is defined as having at least one protuberance 40. FIG. 2 depicts a plurality of such protuberances 40 on the outer surface of the spout 33.

Turning to the top cap 50, it is defined in claim 38 as having an upper portion 51, a skirt portion 57, and a top cap sealing member 59. In FIG. 1, the top cap 50 has two sealing members (i.e. sealing ribs 54 and 59), however it is the depicted sealing rib 59 that comprises the "top cap sealing member" defined in claims 38-40 as it is this sealing rib that "rides up over said at least one protuberance" when the top cap relatively moves from its defined first position to the defined

second position. Because there are gaps between the protuberances, it is possible for air to flow between the sealing member 59 and the external wall of the spout 33 when the member 59 moves the protuberance.

Independent claim 39 defines a closure having the features mentioned above with respect to claim 38 but goes on to define the top cap sealing member as comprising a "top cap sealing rib".

Independent claim 40 also defines the top cap as having the features mentioned above with respect to claim 38 but goes on to define the top cap as also having "an annular sealing rib" that extends partially across the opening in its top portion. This is sealing rib 54 in Fig. 1.

In contrast to the comment of the Examiner, it is respectfully submitted that claim 25 does not repeat the features of claims 38-40. Claim 25 is directed to the "main closure sealing rib", i.e. sealing rib 16 and not the sealing members of the "top cap".

Therefore, it is respectfully requested that the objection to the claim be withdrawn.

### **III. Claim Rejections Under 35 U.S.C. § 103(a)<sup>1</sup>**

#### **A. Groesbeck in view of Reifsnyder**

Claims 38-40, 2, 9-12, 15-18 and 20-25 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Groesbeck U.S. 5,810,185 in view of Reifsnyder U.S. 2,493,086. Applicants respectfully disagree.

Independent claim 38 recites, in pertinent part,

and further wherein the top cap sealing member comprises an annular sealing rib that on mounting of the top cap to the spout in said first position seals with the outer surface of the spout below the protuberances thereon,

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<sup>1</sup> Applicants note that the office action mailed December 30, 2008 stated that the claims 38-40, 2, 9-12, 15-18 and 20-25 are rejected under 35 U.S.C. 102(b), however the explanation of the rejection appeared to indicate that the rejection was intended to be under 35 U.S.C. § 103(a), this was confirmed by the Examiner during the telephonic interview on May 21, 2009.

the annular sealing rib including a first portion which is contiguous with an inner surface of the skirt portion of the top cap and at least a second portion contiguous with the first portion, the second portion, prior to mounting of the top cap to the spout, extending radially inwardly to a circular free edge.

Similarly, independent claim 39 recites, in pertinent part,

wherein on relative movement of the top cap from said first position towards said second position, the top cap sealing member rides up over said at least one protuberance so as to at least partially release the seal made by the top cap sealing member with said spout;

and wherein the top cap sealing member comprises a top cap sealing rib that, prior to mounting of the top cap to the spout, extends inwardly and downwardly from an inner surface of the top cap to a circular edge.

Furthermore, independent claim 40 recites, in pertinent part,

wherein on relative movement of the top cap from said first position towards said second position, the top cap sealing member rides up over said at least one protuberance so as to at least partially release the seal made by the top cap sealing member with said spout;

and wherein, prior to the plug member firstly entering the opening in the upper portion of the top cap, an annular sealing rib extends inwardly from the upper portion at least partially across the opening to a free edge, the inner surface of the opening having an internal diameter relative to the external diameter of the plug member such that when the plug member firstly enters the opening, at least a portion of the sealing rib is engaged by the plug member and folded back towards the inner surface of the opening to form a seal between at least the outer surface of the plug member and the top cap.

The Examiner on page 2 of the office action mailed December 30, 2008, asserts that feature 19 of Groesbeck is a "sealing member," but concedes that, Groesbeck does not disclose the sealing member to be a folded portion that extends radially inwardly to a circular free edge, as recited in claim 38, 39 and 40. Therefore, the Examiner relies on Reifsnnyder for this alleged disclosure.

Applicants respectfully submit that Groesbeck feature 19 is a "snap-acting retainer" (see col. 3, lines 59-61). Groesbeck feature 19 works in combination with feature 18 which is also a snap-acting retainer to hold the "movable closure member 11 in its down position," (see col. 3,

lines 60-63). This paragraph goes on to make it clear that features 18 and 19 are not working to seal the closure but work to retain or hold the movable closure 11 in a particular position, i.e. a position where the sealing ring 12 is sealingly compressed. That is, the retainers 18, 19 merely serve to position the movable closure so that other features (i.e. the sealing ring 12) can act to seal the closure.

Moreover, the Examiner appears to equate the snap-acting retainers 18 and 19 with the sealing rib and protuberances recited in claims 38, 39 and 40. However, the purpose of the retainer 18 is not to break the seal formed by a sealing rib and indeed even if feature 19 was modified to be a sealing rib, feature 18 it would not break the seal as it is continuously annular around the perimeter of the spout. Furthermore, were retainer 19 modified to be a sealing rib, the sealing it makes with the external surface of the spout would not change as it would merely ride over the retainer 18. By contrast, the fact that the subject matter recited in claims 38, 39 and 40, recite a protuberance causes a break in the seal (due to air flow being possible at the location of the protuberance – see specification, page 19, lines 16-30).

Moreover, in contrast to Groesbeck, in the current subject matter, movement of the top cap is controlled by movement of the thread 62 that is on the top cap in the thread recess 44 that is on the spout below the sealing rib 59. It is the engagement of the thread 62 in the thread recess that controls the position of the top cap relative to the spout, however, the thread and recess play no role in sealing the closure. Sealing is performed by a different feature, i.e. the sealing rib 59. It is inappropriate to equate the sealing member 59 of the present invention with the retainer 19 of Groesbeck.

As such, it is clear that a person having ordinary skill in the art would not have found it obvious to modify the snap-acting retaining mechanism of Groesbeck in order to achieve the sealing configuration recited in instant claims 38, 39, and 40.

Moreover, Reifsnyder does not teach a feature that is equivalent to the top cap sealing member of claims 38-40 (i.e. sealing rib 59) that extends inwardly from an inner surface of the skirt of the top cap. Rather, Reifsnyder discloses a cover that fits over the upper lip of a paper cup, (see col. 1, lines 1-5).

Furthermore, there is no teaching or suggestion in Reifsnyder to modify the retainer of Groesbeck in the manner claimed. Indeed the only teaching of configuring a top cap mounted to a spout sealing member to be a folded portion that extends radially inwardly to a circular free edge, is in Applicants disclosure. However, the teaching or suggestion to make a claimed combination and the reasonable expectation of success must not be based on Appellants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The Examiner has apparently relied on improper hindsight reasoning in reaching the conclusion of obviousness.

Therefore, it is clear that none of Groesbeck and Reifsnyder teach or suggest all of the elements of claims 38, 39 and 40, and a person having ordinary skill in the art would not have found it obvious to modify the retainers 19 of Groesbeck with the Reifsnyder.

Accordingly, it is respectfully submitted that claims 38, 39 and 40 are allowable. Furthermore, claims 2-6, 9-12, 15-18, 20-25 depend from and further define the subject matter of claim 38, 39 and 40 respectively, and therefore are also allowable.

Furthermore, as conceded by the Examiner on page 3 of the office action, mailed December 30, 2008, Groesbeck does not disclose a plurality of protuberances on the spout as

recited in claim 2. Furthermore, Reifsnnyder also does not teach or suggest any such protuberances. Therefore, claim 2 is allowable based on its own merits.

**B. Groesbeck in view of Reifsnnyder and further in view of Beck**

Claims 3-6<sup>2</sup> were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Groesbeck in view of Reifsnnyder and further in view of Beck et al., U.S. 6,024,256. Applicants respectfully disagree.

As discussed above, in reference to claims 38, 39 and 40, Groesbeck in view of Reifsnnyder does not teach or suggest a sealing member or sealing rib as recited in claims 38, 39 and 40. The Examiner at page 3 of the office action mailed December 30, 2008, concedes that Groesbeck does not disclose a plurality of protuberances on the spout, as recited in claims 2-6, and therefore relies on Beck for this disclosure.

However, Beck fails to cure the deficiencies of Groesbeck in view of Reifsnnyder as Beck also fails to teach or suggest a sealing rib as recited in claims 38, 39 and 40.

Therefore, none of Groesbeck, Reifsnnyder or Beck, either alone or in combination, teach or suggest all of the elements of claims 38-40. Accordingly, it is respectfully submitted that claims 38, 39 and 40 are allowable. Furthermore, claims 2-6, 9-12, 15-18, 20-25 depend from and further define the subject matter of claim 38, 39 and 40 respectively, and therefore are also allowable.

Moreover, claims 2-6 are allowable on their own merits, at least because none of Groesbeck, Reifsnnyder or Beck teach or suggest the protuberances as recited in claims 2-6.

As recited in claim 2, “the outer surface of the spout has a plurality of outwardly extending protuberances thereon.” The Examiner concedes on page 3 of the office action mailed

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<sup>2</sup> The Examiner lists claims 3-6 as being rejected, but concedes that the elements of claim 2 “a plurality of protuberances on the spout,” is not disclosed by Groesbeck.

December 30, 2008, that Groesbeck does not disclose "a plurality of protuberances on the spout." Therefore the Examiner asserts that feature 22 of Beck for this alleged disclosure.

Beck, feature 22 is described in col. 3, lines 50-52 as "spot seals or frangible connections" which connect the spout 18 to the circumferential skirt 24. Applicants respectfully submit that it is not reasonable to consider that these features (i.e. frangible connections) are in any way equivalent to the protuberances defined in the claims of the current application and which are described and depicted, for example, in FIG. 2 as serving to release the seal made by the sealing rib 59. Moreover, there is no depiction or suggestion of a sealing rib passing over the frangible connections in the cited prior art references.

As such, it is clear that none of Groesbeck, Reifsnyder or Beck, either alone or in combination, teach or suggest all of the elements of claim 2. Accordingly, claim 2 is allowable. Furthermore, claims 3-6 depend from claim 2 and therefore are also allowable.

**C. Groesbeck in view of Pehr**

Claims 38-40, 2, 9-12, 15-18 and 20-25 were rejected under 35 U.S.C. § 103(a)<sup>3</sup> as allegedly being unpatentable over Groesbeck in view of Pehr U.S. 4,401,227. Applicants respectfully disagree. The Examiner concedes that Groesbeck does not disclose the sealing member 19 to be a folded portion that extends radially inwardly to a circular free edge, and therefore relies on Pehr for this alleged disclosure.

However, as discussed above, in reference to the rejection over Groesbeck in view of Reifsnyder, discussed above, feature 19 of Groesbeck is snap-acting retainer and does not act to seal the Groesbeck closure.

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<sup>3</sup> Applicants note that the office action mailed December 30, 2008 stated that the claims 38-40, 2, 9-12, 15-18 and 20-25 are rejected under 35 U.S.C. 102(b), however the explanation of the rejection appeared to indicate that the rejection was intended to be under 35 U.S.C. § 103(a), this was confirmed by the Examiner during the telephonic interview on May 21, 2009.

Furthermore, Pehr depicts a tamper-evident band having “lugs 8”. In contrast to the comment of the examiner, the lugs 8 of Pehr are not sealing members. These lugs are simply provided to hold the tamper evident band in place when the Pehr closure is removed from the container. Moreover, the lugs play no role in sealing the container. In contrast to the comment of the Examiner, it is not the purpose of the sealing rib 59 to provide “a self locking cover” but rather to provide a seal with the outside surface of a spout formed in the main closure as defined herein.

Therefore, it is clear that none of Groesbeck and Pehr teach or suggest all of the elements of claims 38, 39 and 40, and a person having ordinary skill in the art would not have found it obvious to modify the retainers 19 of Groesbeck with the Pehr.

Accordingly, it is respectfully submitted that claims 38, 39 and 40 are allowable. Furthermore, claims 2-6, 9-12, 15-18, 20-25 depend from and further define the subject matter of claim 38, 39 and 40 respectively, and therefore are also allowable.

Furthermore, as conceded by the Examiner on page 3 of the office action, mailed December 30, 2008, Groesbeck does not disclose a plurality of protuberances on the spout as recited in claim 2. Furthermore, Pehr also does not teach or suggest any such protuberances. Therefore, claim 2 is allowable based on its own merits.

**D. Groesbeck in view of Pehr and further in view of Beck**

Claims 3-6<sup>4</sup> were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Groesbeck in view of Pehr and further in view of Beck et al., U.S. 6,024,256. Applicants respectfully disagree.

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<sup>4</sup> The Examiner lists claims 3-6 as being rejected, but concedes that the elements of claim 2 “a plurality of protuberances on the spout,” is not disclosed by Groesbeck.



As discussed above, in reference to claims 38, 39 and 40, Groesbeck in view of Pehr does not teach or suggest a sealing member or sealing rib as recited in claims 38, 39 and 40. The Examiner at page 4 of the office action mailed December 30, 2008, concedes that Groesbeck does not disclose a plurality of protuberances on the spout, as recited in claims 2-6, and therefore relies on Beck for this disclosure.

However, Beck fails to cure the deficiencies of Groesbeck in view of Pehr as Beck also fails to teach or suggest a sealing rib as recited in claims 38, 39 and 40.

Therefore, none of Groesbeck, Pehr or Beck, either alone or in combination, teach or suggest all of the elements of claims 38-40. Accordingly, it is respectfully submitted that claims 38, 39 and 40 are allowable. Furthermore, claims 2-6, 9-12, 15-18, 20-25 depend from and further define the subject matter of claim 38, 39 and 40 respectively, and therefore are also allowable.

Moreover, claims 2-6 are allowable on their own merits, at least because none of Groesbeck, Pehr or Beck teach or suggest the protuberances as recited in claims 2-6.

As recited in claim 2, "the outer surface of the spout has a plurality of outwardly extending protuberances thereon." The Examiner concedes on page 4 of the office action mailed December 30, 2008, that Groesbeck does not disclose "a plurality of protuberances on the spout." Therefore the Examiner asserts that feature 22 of Beck for this alleged disclosure.

Beck, feature 22 is described in col. 3, lines 50-52 as "spot seals or frangible connections" which connect the spout 18 to the circumferential skirt 24. Applicants respectfully submit that it is not reasonable to consider that these features (i.e. frangible connections) are in any way equivalent to the protuberances defined in the claims of the current application and which are described and depicted, for example, in FIG. 2 as serving to release the seal made by

the sealing rib 59. Moreover, there is no depiction or suggestion of a sealing rib passing over the frangible connections in the cited prior art references.

As such, it is clear that none of Groesbeck, Pehr or Beck, either alone or in combination, teach or suggest all of the elements of claim 2. Accordingly, claim 2 is allowable. Furthermore, claims 3-6 depend from claim 2 and therefore are also allowable.

**E. Groesbeck in view of Stull**

Claims 38, 39, 2, 9, 12, 17, 18 and 22-24 are rejected under 35 U.S.C. 103(a)<sup>5</sup> as allegedly being unpatentable over Groesbeck in view of Stull U.S. 4,424,918. Applicants respectfully disagree.

Applicants respectfully disagree. The Examiner concedes that Groesbeck does not disclose the sealing member 19 to be a folded portion that extends radially inwardly to a circular free edge, and therefore relies on Stull for this alleged disclosure.

However, as discussed above, in reference to the rejection over Groesbeck in view of Reifsnnyder, discussed above, feature 19 of Groesbeck is snap-acting retainer and does not act to seal the Groesbeck closure.

Stull depicts a flange 30 which engages with a neck of a container. There is no disclosure of a sealing rib, such as sealing rib as recited in claims 38 and 39, that extends inwardly from an inner surface of a skirt of a closure and which is adapted to seal with a spout, as defined in the current claims. Still further movement of a flange past the feature 18 of Groesbeck would not break the seal formed by the flange. This can be achieved by the presence of a protuberance 40

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<sup>5</sup> Applicants note that the office action mailed December 30, 2008 stated that the claims 38, 29, 2, 9, 12, 17, 18 and 22-24 are rejected under 35 U.S.C. 102(b), however the explanation of the rejection appeared to indicate that the rejection was intended to be under 35 U.S.C. § 103(a), this was confirmed by the Examiner during the telephonic interview on May 21, 2009.

as defined in the current claims that forces the sealing rib to lift away from the external surface of the spout.

Therefore, it is clear that none of Groesbeck and Stull teach or suggest all of the elements of claims 38 and 39, and a person having ordinary skill in the art would not have found it obvious to modify the retainers 19 of Groesbeck with the Stull.

Accordingly, it is respectfully submitted that claims 38, and 29 are allowable. Furthermore, claims 2, 9, 12, 17, 18 and 22-24 depend from and further define the subject matter of claim 38 and 39 respectively, and therefore are also allowable.

Furthermore, as conceded by the Examiner on page 5 of the office action, mailed December 30, 2008, Groesbeck does not disclose a plurality of protuberances on the spout as recited in claim 2. Furthermore, Stull also does not teach or suggest any such protuberances. Therefore, claim 2 is allowable based on its own merits.

**F. Groesbeck in view of Stull and further in view of Beck**

Claims 3-6<sup>6</sup> were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Groesbeck in view of Stull and further in view of Beck et al., U.S. 6,024,256. Applicants respectfully disagree.

As discussed above, in reference to claims 38 and 39, Groesbeck in view of Stull does not teach or suggest a sealing member or sealing rib as rib as recited in claims 38 and 39. The Examiner at page 5 of the office action mailed December 30, 2008, concedes that Groesbeck does not disclose a plurality of protuberances on the spout, as recited in claims 2-6, and therefore relies on Beck for this disclosure.

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<sup>6</sup> The Examiner lists claims 3-6 as being rejected, but concedes that the elements of claim 2 “a plurality of protuberances on the spout,” is not disclosed by Groesbeck.

However, Beck fails to cure the deficiencies of Groesbeck in view of Pehr as Beck also fails to teach or suggest a sealing rib as recited in claims 38 and 39

Therefore, none of Groesbeck, Stull or Beck, either alone or in combination, teach or suggest all of the elements of claims 38-40. Accordingly, it is respectfully submitted that claims 38, 39 and 40 are allowable. Furthermore, claims 3-6 depend from and further define the subject matter of claim 38 and 39 respectively, and therefore are also allowable.

Moreover, claims 2-6 are allowable on their own merits, at least because none of Groesbeck, Stull or Beck teach or suggest the protuberances as recited in claims 2-6.

As recited in claim 2, "the outer surface of the spout has a plurality of outwardly extending protuberances thereon." The Examiner concedes on page 4 of the office action mailed December 30, 2008, that Groesbeck does not disclose "a plurality of protuberances on the spout." Therefore the Examiner asserts that feature 22 of Beck for this alleged disclosure.

Beck, feature 22 is described in col. 3, lines 50-52 as "spot seals or frangible connections" which connect the spout 18 to the circumferential skirt 24. Applicants respectfully submit that it is not reasonable to consider that these features (i.e. frangible connections) are in any way equivalent to the protuberances defined in the claims of the current application and which are described and depicted, for example, in FIG. 2 as serving to release the seal made by the sealing rib 59. Moreover, there is no depiction or suggestion of a sealing rib passing over the frangible connections in the cited prior art references.

As such, it is clear that none of Groesbeck, Stull or Beck, either alone or in combination, teach or suggest all of the elements of claim 2. Accordingly, claim 2 is allowable. Furthermore, claims 3-6 depend from claim 2 and therefore are also allowable.

**Application No.: 10/501,190**

In view of the above amendments and remarks, Applicants submit that the amendments should be entered, this application should be allowed and the case be passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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